IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1665 of 1991

MOHAN LAL & ORS
V/S
STATE

Mr. MR SINGHVI & Mr. GIRISH JOSHI, for the appellant / petitioner

Mr. JM BHANDARI & Mr. OP BOOB, A.G.A., for the respondents

Date of Order : 26.2.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition the petitioner seeks a direction, to quash the resolution of the Municipal Board dt. 27.12.1990, and has also prayed to call for the record of the S.D.O. with respect to file no. 2/91, and to quash the order passed by the S.D.O. on 4.3.1991, and has also prayed that the application filed by the petitioner under Section 285 may be directed to be accepted by following the procedure prescribed by Section 285(2) of the Rajasthan Municipalities Act. Yet another prayer made is, that the space in between the shop of Kishanlal and booking office of the Rajasthan State Road Transport Corporation may be declared as a public way, and a restrain is sought against the Municipality from changing the existing way, as shown in the arbitration award.

Facts of the case, as alleged by the petitioners are, that five petitioners purport to be public spirited person, and claim to be interested in development and welfare of Parbatsar. Then, it is alleged from para-4 onwards, that the petitioner Kishanlal had taken a shop on rent from Municipal Board, and he is a small trader dealing in the vegetables fruits and snacks, and by ideology he belongs to Congress (I) party. In 1982 election he was elected as member of the Municipal Board, with the ticket of Congress (I), while Ram Niwas was elected on the banner of B.J.P., and since then he nurses a political bias. It is then alleged that this time when Ram Niwas Rathi became Chairman, he engineered a design to uproot the petitioner Kishanlal, and his brother, from the rented premises, under the pretext of constructing a bus stand, and consequently a notice was given to Kishanlal on 30.9.1982, to vacate the land. Then, Kishanlal approached the Government, as he apprehended being uprooted, and in view of the political rivalry there was apprehension of likelihood of breach of peace, and therefore, application was filed by Kishanlal under Section 285(1), whereupon stay was granted on 12.11.1982. However, instead of referring the matter to the State Government under Section 285(2), stay was vacated vide order dt. 1.12.1982, whereupon Kishanlal approached this Court, along with his brother Mahaveer Prasad, by way of Writ Petition, being S.B. Civil Writ Petition No.

2292/1982. That writ was disposed vide order dt. 5.5.1983, directing the State Government to dispose of the matter within a period of two months. Alternatively S.D.O. was directed to refer the matter within a fortnight from the date of order, but then the order dt. 1.12.1982 was not set aside, therefore, D.B. Civil Special Appeal was filed, being D.B. Civil Special Appeal No. 220/1983, which was decided on 13.7.1983, and therein the order dt. 1.12.1982 was quashed, and State Government was left free to pass order under Section 285(2). It is alleged that thereafter the State Government addressed the communication dt. 19.5.1984, directing that Kishanlal and Mahaveer Prasad be allowed to continue on their shops, and the rent may be realised from them in accordance with law. Then, it is alleged that Ram Niwas Rathi, along with the members belonging to B.J.P., filed a writ petition in this Court against this communication dt. 19.5.1984, being S.B. Civil Writ Petition No. 1842/84. That writ was got dismissed on 28.1.1986 vide Annexure-4. Thus, it is claimed that Kishanlal and Mahaveer Prasad became entitled to continue with their shop. With this, it is alleged, that it was agreed by all the parties, viz. Ram Niwas Rathi, Kishanlal and Mahaveer Prasad, that the matter may be referred, regarding situation of the shop of the petitioner, to arbitration, and accordingly the matter was referred, and the award was passed, directing that there shall be public way of 15ft. width, and on the western side of the public

way there shall be two shops, one each belonging to Kishanlal and Mahveer Prasad, and on the east of public way there shall be booking hall. The total area of two shops shall be 28 x 10.9 ft. This award has been produced as Annexure-5. According to the petitioner, thus the controversy was brought to an end, and when the petitioner Kishanlal applied for seeking permission to raise construction over the rented premises, the permission was granted, and it was mentioned, that there shall be a way measuring 17ft., between the shop of Kishanlal and booking office, and according to the petitioner the shops were accordingly constructed. According to the petitioner thereafter elections of Municipal Board took place, and petitioner Kishanlal was again elected on the ticket of Congress (I), so also Ram Niwas Rathi on the ticket of B.J.P. and Ram Niwas Rathi happened to be Chairman. It was alleged, that with a view to humiliate Kishanlal, and his brother Mahaveer Prasad, instead of abiding by the arbitration award, it was choosen to destroy the location and situation of shop, by way of passing resolution dt. 27.12.1990, to construct public amenities (latrine and urinals), towards the western side of the disputed shop. In the meeting the proposal was opposed by Kishanlal, as sufficient amount of public amenities already exist, and if at all it was required, they can be constructed in open space. It was then alleged, that the Rajasthan State Road Transport Corporation also submitted their objection. It is

alleged, that the above way is being used by the public for the purpose of going to Bohron Ka Bass and schools, and is required to be kept open, and now by the impugned action, it is threatened to be closed. It is then alleged, that since the resolution dt. 27.12.1990 was illegal, the petition under Section 285(1) was filed, and the learned S.D.O. after receiving reply passed the order dt. 4.3.1991, dismissing that application. With the above facts resolution and the order of the S.D.O. is sought to be challenged.

A reply to the writ petition has been filed on behalf of the State, contending interalia, that the Municipality, for the welfare of the town, can demolish the place in the public, and Municipality therefore adopted the resolution, and is to take action in the public interest, and not for the interest of any individual, and the wisdom of one individual cannot be allowed to prevail. It was also contended, that there is a public bus stand, and a large number of people come there, who face hardship on account of non availability of public amenities, and therefore, it was planned to construct the public amenities, but the petitioners want to object, only because they are having rented shop, who have no business to advise, that the amenities should be constructed on open land.

During pendency of this writ petition, petitioner

no.3 Kishanlal filed an application, seeking to withdraw from the writ petition, and prayed that his name may be deleted from the array of the writ petitioners. This application came to be allowed by this Court, vide order dt. 7.8.2000, and Kishanlal was permitted to withdraw from the petition, and his name was ordered to be deleted.

A look at the reply filed to the petition under Section 285 of the Rajasthan Municipalities Act shows, that out of the present petitioners, petitioner no. 1 is said to be resident of Bajwas situated at 40 Kms. away from the town of Parbatsar, while petitioner no.2 Ramesh Chandra is said to be sitting Sarpanch of Gram Panchayat Piplad. Similarly the other petitioner Arjun Ram is also said to be resident of Bajwas, and yet another petitioner Panna Lal was said to be near kin of the petitioner Kishanlal.

The above narration of the facts, does clearly show, that though the petitioners have come up, wearing mask of being public spirited persons, and the writ being calculated to advance public cause, but the real colours are not far to seek, inasmuch as the entire controversy, even according to the averments of the writ petition, centers round the petitioner Kishanlal, as to whether entire action is calculated to disturb/uproot or cause inconvenience to Kishanlal. It has come in the order dt. 4.3.1991, that the alleged way, which was going further in

the north, stands closed, as there was a railway line, and the railway authorities, in order to protect the railway track, have erected iron rail barricades, and therefore, it is no more permissible to allow the land to be used as public way, which cannot go further, on account of barricading erected by the railways, and existence of railway track. A look at the application under Section 285 also shows, that though it purports to be application on behalf of five persons, including the petitioner Kishanlal, but then, it is supported by affidavit of Kishanlal only, and it is well nigh possible, to have been signed by Kishanlal alone. Be that as it may. Thus, it is clear that the controversy precisely rests, and centers round, the individual interest of the petitioner Kishanlal.

In that view of the matter, since Kishanlal has already withdrawn from the writ petition, and in view of the fact, that the said way is closed towards further north, by the iron barricading of the railways, and existence of railway track, it cannot be said, that the proposal of the Municipality, as resolved in the resolution dt. 27.12.1990, and the order of the S.D.O. dt. 4.3.1991, are required to be interfered with. So far as political motives, as alleged, are concerned, suffice it to say, that the S.D.O. has already observed, that the proposal for construction of public amenities had already been sent, even before the constitution of the present Board, by the

then Administrator, to the planning department.

Thus, taken from any stand point, I do not find any force in the writ petition. The same is, therefore, dismissed. Parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/